

FILED

MAR 13 2008

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAPOSTED ON WEBSITE
NOT FOR PUBLICATIONUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)	Case No. 06-25337-D-13L
)	
ROBERT P. MARSON,)	Docket Control No. RPB-4
)	
)	Date: March 4, 2008
Debtor.)	Time: 1:00 p.m.
)	Dept: D

MEMORANDUM DECISION

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

The motion of Raymond P. Burton, Jr. ("the Applicant") for a first and final allowance of attorney's fees and costs, Docket Control No. RPB-4 ("the Motion"), came on for hearing on March 4, 2008. Robert P. Marson ("the Debtor"), having previously filed written opposition, appeared at the hearing on his own behalf,¹ and the Applicant appeared on his own behalf. No other opposition was filed or presented. For the reasons set forth below, the court will grant the Motion.

The Debtor, through the Applicant as his then attorney of record, filed a voluntary chapter 13 petition on December 13, 2006, thereby commencing this case. The Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys and the Disclosure of Compensation of Attorney for Debtor, both filed December 28, 2006, stated that initial attorney's fees charged in

1. The court granted the Applicant's motion to withdraw as the Debtor's counsel on December 2, 2007.

1 the case were \$5,000, of which \$1,676 was paid by the Debtor
2 before the filing of the petition.² The Applicant opted to be
3 paid the balance of the initial fee, \$3,324, through the Debtor's
4 chapter 13 plan, pursuant to this court's Guidelines for Payment
5 of Attorneys' Fees in Chapter 13 Cases. According to the Motion,
6 that balance has been paid through the confirmed plan.³

7 The Applicant now seeks approval of an additional \$20,036.10
8 in attorney's fees and costs.⁴ In support of the Motion, the
9 Applicant submitted a detailed billing statement setting forth
10 the dates and descriptions of the services performed and the time
11 spent on each, as well an itemization of the costs advanced, and
12 a declaration of the Applicant testifying to the accuracy of the
13 billing statement.

14 The Debtor opposes the Motion on the grounds that (1) the
15 Applicant was unethical and dishonest, (2) the Applicant took
16 funds of the Debtor from the Applicant's client trust account
17 against the instructions of the Debtor, (3) the Applicant did not
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19 2. The Motion indicates the Applicant was also paid \$274 as
20 an advance of the filing fee for the petition and \$50 as an
21 advance of the consumer credit counseling fee, for a total
initial fee of \$5,324.

22 3. The Debtor's first amended chapter 13 plan, filed
February 13, 2007, was confirmed by order filed June 12, 2007.

23 4. The Motion does not break down this total as between
24 fees and costs. Instead, the Motion lists attorney's fees
25 incurred in the case at \$24,926, and costs at \$434.10, for a
total of \$25,360.10. The motion then deducts the \$5,324
previously paid to arrive at a balance due of \$20,036.10.

26 It appears the \$5,324 previously paid was applied to
27 attorney's fees of \$5,000, and costs of \$324 [\$274 for the filing
28 fee and \$50 for the credit counseling fee]. Thus, it appears
that of the additional \$20,036.10 now sought, \$19,926 is on
account of fees and \$110.10 is for costs.

1 act in the Debtor's best interest, (4) the Applicant withdrew
2 from representation of the Debtor with pending court dates in an
3 adversary proceeding, and (5) the Applicant sought court approval
4 of a compromise the Debtor did not want.⁵

5 Section 330 of the Bankruptcy Code sets out the standards by
6 which courts should determine the reasonableness of fees under
7 Section 329, and reasonableness is determined by looking at the
8 nature, extent, and value of the services rendered. See In re
9 Eliapo, 298 B.R. 392, 401 (9th Cir. BAP 2003). In determining
10 the amount of reasonable compensation, the court considers the
11 nature, extent, and value of the services rendered, taking
12 account of all relevant factors, including the time spent, the
13 rates charged, whether the services were necessary to the
14 administration of, or beneficial at the time they were rendered
15 toward the completion of the bankruptcy case, whether the
16 services were performed within a reasonable amount of time
17 commensurate with the complexity, importance, and nature of the
18 problem, issue, or task addressed, whether the professional is
19 board certified or otherwise has demonstrated skill and
20 experience in the bankruptcy field, and the customary
21 compensation of comparably skilled attorneys in other types of
22 cases. 11 U.S.C. § 330(a)(3).

23 Based on the court's review of the billing statement and the
24 record in this case and its related adversary proceeding, Marson
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26 5. The accusations that the Applicant was unethical and
27 dishonest and that he did not act in the Debtor's best interest
28 are stated as conclusions, and are unsupported except by
reference to the other three specific complaints. Thus, they
will not be addressed separately.

1 v. Marson, Adv. No. 07-2012, and given the court's general
2 familiarity with the case and adversary proceeding, the court
3 concludes that the rate charged (\$220 per hour) is not
4 disproportionate to the quality of the services provided, and
5 that the time spent (113.3 hours) is not disproportionate to the
6 problems addressed by the Applicant in the case and adversary
7 proceeding. The court recognizes that the services rendered have
8 not been to the Debtor's satisfaction, but concludes that the
9 parent case and the adversary proceeding have been handled
10 competently and reasonably.

11 The Debtor's opposition begins with a brief history of his
12 conflicts with his brother, Edward Marson, in connection with
13 their partnership business known as Marson's Big & Tall, which
14 conflicts resulted in a state court partnership dissolution
15 action that was pending when this chapter 13 case was commenced.⁶
16 The Debtor complains that the Applicant "did nothing" to assist
17 him with these problems prior to the filing of the chapter 13
18 petition, but the Debtor's dissatisfaction with the Applicant was
19 not sufficient to cause him to look elsewhere for representation
20 in the chapter 13 case.

21 The Debtor's complaints about the Applicant's conduct in the
22 chapter 13 case center around the Debtor's dissatisfaction with a
23 compromise of the adversary proceeding, a compromise this court
24 approved over the Debtor's objection, at a hearing held March 11,
25 2008. A good portion of the Debtor's opposition to the present
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27 6. The Applicant removed the state court action to this
28 court on January 10, 2007, and it was designated Adv. No. 07-
2012.

1 Motion concerns an asset evaluation report prepared by one Kevin
2 Eckard in connection with the parties' attempts to mediate the
3 adversary proceeding. The Debtor complains that the Applicant
4 prevented him from having any input into the report. This
5 contention is contradicted by the Applicant's testimony, and
6 independently, by a declaration of Mr. Eckard, filed February 11,
7 2008 in the adversary proceeding.⁷

8 The Debtor's contention that the Applicant withdrew \$300
9 from his client trust account without the Debtor's permission,
10 and against his explicit instructions, is similarly misplaced.
11 The Applicant withdrew the \$300 for the purpose of paying the
12 filing fee to answer a complaint against the Debtor's brother,
13 pursuant to a hold-harmless agreement between the Debtor and his
14 brother. The Debtor's account of the transaction is contradicted
15 by the Applicant's account, and the latter's version is supported
16 by letters dated June 18, 2007 to the Debtor and his wife, and to
17 an opposing attorney, as well as by a letter to the debtor and
18 his wife requesting permission to transmit the letter to the
19 opposing attorney.

20 Based on this documentary evidence, the court accepts the
21 Applicant's version of these events, but even if the Debtor's
22 version were correct, the court finds that the \$300 was spent on
23 behalf of the Debtor, pursuant to his agreement with his brother,
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25 7. Mr. Eckard stated in his declaration that in his
26 conversations with the Debtor, the Debtor had "verified his
27 agreement with" the real estate valuations provided to Eckard by
28 the Debtor's brother. Mr. Eckard also testified to a telephone
conversation with the Debtor's wife, Marlene Marson, who "stated
to me that she understands my report; where and how I derived my
conclusions. She indicated to me that she had no objection to my
conclusions."

1 at a time when the Debtor knew an answer to the complaint was
2 due. The court also finds that the Debtor ratified the
3 Applicant's conduct in paying the filing fee by later signing the
4 two settlement agreements with his brother, referenced below.

5 The Debtor next complains that the Applicant withdrew as his
6 counsel at a time when there were pending court hearings in the
7 adversary proceeding. The record reveals that the Debtor did not
8 oppose the Applicant's withdrawal, either in writing or at the
9 hearing, and that the court continued the pretrial conference to
10 allow the Debtor time to find replacement counsel. See
11 transcript of November 20, 2007 hearing, DN 40 in Adv. No. 07-
12 2012. The court thus finds no harm to the Debtor from the timing
13 of the Applicant's motion to withdraw.

14 Finally, the Debtor complains that the Applicant coerced him
15 into the settlement with his brother, a settlement he now claims
16 is not in his best interest. The court stated its findings of
17 fact and conclusions of law regarding the settlement on the
18 record at the March 11, 2008 hearing on the motion of Edward
19 Marson for approval of the compromise. As stated therein, the
20 court finds that the settlement resulted from lengthy
21 negotiations, including two mediation sessions with the court-
22 appointed resolution advocate. The Debtor signed not one but two
23 settlement agreements, on dates one month apart, and between
24 those two dates, the Debtor wrote to the Applicant indicating he
25 intended to take a route not contemplated by the settlement. Yet
26 he ultimately signed the second version of the settlement
27 agreement.

28 / / /

1 The Debtor stated at the hearing that he did not read that
2 second settlement agreement before he signed it, and his
3 opposition to this Motion indicates he read it only after he
4 returned to his place of business, at which point he allegedly
5 discovered that the Applicant had lied to him about its contents.
6 However, by the time of the second mediation session, on October
7 12, 2007, when the second agreement was signed, the Debtor had
8 expressed dissatisfaction with the Applicant, and was deeply
9 distrustful of his brother and his brother's counsel. Under
10 these circumstances, it was not reasonable for the Debtor to sign
11 the settlement agreement without reading it first, and having
12 done so, the Debtor cannot reasonably complain about the
13 agreement or about the Applicant's services leading up to the
14 agreement.

15 In short, the court concludes that the Debtor had a change
16 of heart after he signed the first settlement agreement, but
17 evaluated the situation and decided to sign the second version
18 anyway. After signing, he again experienced "buyer's remorse,"
19 and attempted to withdraw from the settlement. The court also
20 concludes that the Debtor has transferred his dissatisfaction
21 with the settlement to a general dissatisfaction with the
22 Applicant. A client's unhappiness with the outcome of a case,
23 however, does not demonstrate that the services performed by the
24 attorney were not necessary or reasonable.

25 III. CONCLUSION

26 The court concludes that, in light of the factors outlined
27 in § 330(a)(3), the fees and costs requested are reasonable and
28 were necessary to the administration of the bankruptcy case and

1 the adversary proceeding. Accordingly, the court will enter an
2 order granting the Motion.

3 Dated: March 13, 2008

Robert S. Bardwil
4 ROBERT S. BARDWIL
5 United States Bankruptcy Judge
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CERTIFICATE OF MAILING

I, Andrea Lovgren, in the performance of my duties as assistant to the Honorable Robert S. Bardwil, mailed by ordinary mail a true copy of the attached document to each of the parties listed below:

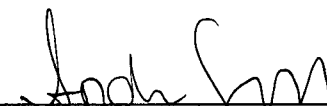
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DATE: March 13, 2008



Andrea Lovgren